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October 30, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 23, 2006

Case Number: TSO-0405

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter the individual) to hold an access authorization.¹ The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. As discussed below, I find that the individual has met her burden to bring forward sufficient evidence to show that her access authorization should be restored.

I. Background

This administrative review proceeding began with the issuance of a Notification Letter, informing the individual that information in the possession of the DOE created substantial doubt pertaining to her eligibility for an access authorization. In accordance with 10 C.F.R. § 710.21, the Notification Letter included a detailed statement of the derogatory information.

Specifically, the Notification Letter indicated that in an initial report of August 5, 2005, a DOE consultant psychologist diagnosed the individual as suffering from Bi-polar Disorder II. However, at that time, the DOE consultant psychiatrist found the disorder to be stabilized. Sometime after that initial report, the individual became depressed, and developed suicidal thoughts for which she

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

sought treatment in September 2005. The DOE consultant psychologist reevaluated the individual's condition in January 2006, and found at that time that her disorder was no longer stabilized. He recommended that the individual demonstrate six months of psychiatric stability in order to reestablish sound judgment and reliability. The Notification Letter stated that this information creates a security concern under 10 C.F.R. § 710.8(h) (Criterion H).²

The Notification Letter informed the individual that she was entitled to a hearing before a Hearing Officer in order to respond to the information contained in that Letter. The individual requested a hearing, and that request was forwarded by the DOE Office to the Office of Hearings and Appeals (OHA). I was appointed the Hearing Officer in this matter. In accordance with 10 C.F.R. § 710.25(e) and (g), the hearing was convened.

At the hearing, the individual was represented by an attorney. The individual testified on her own behalf, and presented the testimony of her treating psychiatrist (individual's psychiatrist), her psychologist (individual's psychologist), the staff psychologist at the site where the individual is employed (staff psychologist), her supervisor, a co-worker, a friend and her partner. The DOE Counsel presented the testimony of the DOE consultant psychologist.

II. Hearing Testimony

A. The Individual

The individual fully recognizes that she has bi-polar disorder. She testified about several incidents of depression and several minor hypo-manic incidents. The most severe depression incident occurred in September 2004. In September 2005 and January/February 2006, she experienced less severe bouts of depression. She believes that the incidents are brought on by stress. For example, the September 2005 incident occurred during the time of a grave family illness. She continued to consult with her doctors, and during the September 2005 and January 2006 incidents her psychiatrist adjusted her medication.

The individual believes that having gone through these incidents, she is now able to recognize the symptoms of an onset of depression

² Criterion H relates to a mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause a significant defect in judgment or reliability.

or hypo-mania, and is prepared to take immediate action to seek help from friends, family and her medical support team. She discussed her treatment program. It involves a regular therapy session with a psychologist. During the past three years these sessions have been on a twice-a-month basis. She also sees a psychiatrist who prescribes and oversees her medications. She confirmed that an adjustment to her medication that took place in February 2006 brought about the best balance she has had, and that she has not had a recurrence of depression since that time.

She also described her life-style routine that is designed to keep her condition under control. She stated that she takes her medication as prescribed, and has regular patterns of sleeping and eating, noting in particular that regular sleep helps her to keep her stress under control. She also maintains a regular exercise program, which helps to control stress. She indicated that she has tried not to let her depression impact her work or home life and testified that her work attendance record is still good. Transcript of Hearing (hereinafter Tr.) at 79-102. See also Individual's Hearing Exhibit A.

She further stated that at the recommendation of her psychologist, she monitors her mood closely. She registers her mood daily on a graph, which has negative numbers one through ten to show depression and positive numbers one through ten to indicate hypo-mania. She has been keeping this record for about one year. She stated that if her mood reached minus four on the graph, she would contact her doctors. She indicated that on the date of the hearing her mood level was about a minus one. Her lowest point was minus seven during September 2004. Her lowest point in the last year was about a minus four or five. Tr. at 124-125.

B. Personal Witnesses

The individual presented the testimony of her partner, a friend, her supervisor and a co-worker. These witnesses have all known the individual for a number of years. Tr. at 10, 27, 54, 66. They were all aware of the individual's bi-polar condition. Tr. at 10, 27, 54, 68. These witnesses all believed the individual to be stable and reliable, and to show good judgment. Tr. at 12, 28, 32, 56, 61, 64, 74. Her supervisor testified that the individual's performance at work is excellent and even continues to improve. She is responsible and has excellent judgment. Tr. at 54, 61. The individual's co-worker testified that the individual is one person in the workplace whom he can count on. Tr. at 74. The friend indicated that she has never seen any sign of depression in the individual. Tr. at 29. The supervisor testified that he has not

seen any mood swings or signs of depression in the individual for at least the past six months to a year. Tr. at 60. Her co-worker indicated that he had never noticed any signs of depression in the individual. Tr. at 73.

The individual's partner was able to testify in more detail about the individual. She was aware of the individual's episodes of depression and indicated that the individual has taken charge of her condition and sought help readily when she needed it. Tr. at 11. She confirmed that the individual experienced a depressive episode in February 2006 while her medication was being adjusted. According to this witness, the individual has been "normal" (i.e. stable) since that time. Tr. at 14. She stated that the individual takes her medications regularly and has a stable routine for caring for herself, including exercise. Tr. at 21. She believes that the individual has a strong support system of friends, family, and a psychologist who will help her when needed. Tr. at 14. She is convinced that the individual knows what to do in the event that she senses the onset of a depression episode. Tr. at 13. As an example, she stated that in February 2006, when the individual felt the onset of depression, she made an appointment to see her psychologist. Tr. at 15. She is persuaded that the individual has the tools to manage her condition. Tr. at 15.

C. The Four Expert Witnesses: the Staff Psychologist; Individual's Psychiatrist; Individual's Psychologist; DOE Consultant Psychologist

1. Staff Psychologist

The staff psychologist is a clinical psychologist employed by the Occupational Health Services Unit at the site where the individual works. His responsibilities include evaluating employees' psychological fitness for duty. He sees the individual every four to eight weeks to assess her functioning. Tr. at 144.³ The staff

³The staff psychologist re-evaluated the individual the day prior to the hearing and provided a written report of that evaluation. The report confirms his testimony that he has no current concerns about the individual's judgment and reliability. Individual's Hearing Exhibit C.

psychologist believes that the individual is a "textbook case" in how to manage bi-polar disease, both in terms of the treatment she is receiving and her progress. Tr. at 130. He believes that she is a good self manager of her condition. He noted that she is aware of the need for regular periods of sleep, nutrition and psychical activity. He stated that she does "a marvelous job" of managing her life-style. Tr. at 131. He testified that she is compliant and has a strong alliance with her mental health care providers. Tr. at 135. He stated: "I would not be concerned about her judgment and reliability in the episodes she has described. She is aware of them." Tr. at 135. In this regard, he stated that her past behavior is the best way to predict her future behavior. She has always been open and honest about her illness and symptoms, and he expects that she will continue to be so in the future. He therefore believes that she will seek help before her mood dips very low. Tr. at 136, 143. He believes that a six-month period of stability and stable functioning is sufficient in this case. Since she has now achieved that period of stability, he believes that she is fit to return to the workplace. Tr. at 138, 142.⁴

2. Individual's Psychiatrist

The individual's psychiatrist testified that he has been treating the individual for bi-polar disease since July 2004. He stated that she does not have the most severe form of bi-polar disorder. Tr. at 44. He sees the individual every four months and manages her medication, but does not provide any therapy. Tr. at 42, 47. He described the medications, and stated that he has confirmed through blood tests that her medications are at therapeutic levels. Tr. at 39, 45. He testified that he adjusted her medications in 2004 and 2005 and that this is a process in which to achieve "better and better control with an easier to use regime." Tr. at 42, 43. He believes that she accepts her illness and necessity for medication and is cooperative about treatment. He also testified that over the long term she will do well. He stated that the individual is taking charge of her illness and is a good partner in her own care. He indicated that she is "good about calling if she needs to," and "comes in promptly." Tr. at 40-41, 47. He stated that she has his

⁴ The staff psychologist dated the period from January 2006, whereas the individual considered her period of stability from February 2006. In either case, as of the time of the hearing in September 2006, the individual had clearly achieved more than six months of stability.

home phone number, which she can use in an emergency. Tr. at 48. He does not believe that she will experience future episodes that would result in a danger in her work. He stated that "she will have some mood changes that will be significant enough to be symptomatic, but that they will be controllable enough not to be a danger." Tr. at 49. He believes that currently her overall functioning level (Global Assessment of Functioning or GAF) is at 75. Tr. at 49.

3. Individual's Psychologist

The individual's psychologist has been treating the individual for depression and anxiety since 1997, and several years later she diagnosed the individual's bi-polar disorder. Tr. at 106. She indicated that the individual is receptive and cooperative in her treatment. Tr. at 120. She stated that the individual has made excellent progress with her disease and that she has been stable for a period of about eight months. Tr. at 107. She believes that there is no reason to be concerned about the individual's judgment in dealing with her work or other people, even when she is depressed. Her only concern is that when the individual is depressed she must be vigilant about caring for herself. Tr. at 107. She stated that the individual is honest and open in counseling, "proactive" with her condition and aware that her condition must be managed. Tr. at 109. Because the individual does manage her disease, the psychologist believes that there is a good prognosis for the individual. Tr. at 110. The psychologist stated that the fact that the individual has had several depressed episodes can be seen as a factor in her favor because she now knows what to look for and what to do about it. Tr. at 121.

The psychologist discussed the graph that the individual uses to chart her mood levels. She stated that she would not be concerned if the individual's mood level dropped to a minus two or minus three, but she would be concerned at the minus four or five level. She indicated that a minus four is "a good time for some intervention" but she would not be "alarmed." She would be alarmed at a minus seven level. Tr. at 122, 126. She and the individual have an understanding about what the numbers mean. Tr. at 126.

4. DOE Consultant Psychologist

After hearing the testimony from all the above witnesses, the consultant psychologist provided an updated opinion of the status of this individual. He believed that the individual is currently in a mentally stable situation. He believes that she has demonstrated acceptance of her condition and compliance with

treatment. Tr. at 152. He believes that she "has done everything right and is in good hands with her psychiatrist and psychologist." Tr. at 153. He noted the importance of managing social rhythms, sleeping and eating regularly, and strategies for coping with stress. He stated that it is clear to him that she is doing these things. Tr. at 154. He believes that she will continue to manage her condition appropriately. Tr. at 160. He stated that her GAF level of 75, as assessed by the individual's psychiatrist, was "not in an area of concern" to him. Tr. at 164.

III. Standard of Review

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See Dep't of Navy v. Egan, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates "that security-clearance determinations should err, if they must, on the side of denials"); Dorfmont v. Brown, 913 F.2d 1399, 1403 (9th Cir. 1990)(strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 at 85,511 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. Personnel Security Hearing (VSO-0005), 24 DOE ¶ 82,753 (1995), aff'd, 25 DOE ¶ 83,013 (1995). See also 10 C.F.R. § 710.7(c).

IV. Analysis

As is evident from the above testimony, this individual has made a very impressive commitment to managing her condition. She is

intelligent, knowledgeable and honest. Based on all the testimony, it is evident that the individual's mental condition is currently stable and that she behaves reliably and responsibly. All witnesses corroborated this conclusion. I also believe that the individual is currently adhering to her medication regime, as prescribed. The experts corroborated this point. I am persuaded that the individual is taking every reasonable measure to preserve her equilibrium by reducing stress and getting appropriate levels of sleep, nutrition and exercise. I am convinced that the individual cares deeply about her personal well being. She testified that she exercises, rests, eats well, has hobbies and interests, and understands how to relieve stress in her life. This indicates to me that she is conscious of the need to maintain her physical and mental health. I therefore believe that she would not want to endanger any aspect of her overall well being by failing to adhere to the treatment program that her psychologist and psychiatrist have prescribed. ⁵

I recognize that there is a continuing risk that, in spite of her excellent attention to her needs and scrupulous adherence to her overall medical program, the individual will experience another depressive episode. I believe that the security concern has to do with whether the individual will recognize that she is experiencing an episode that requires some intervention by her health care professionals. All the evidence in this case points strongly to the conclusion that she will do so. First, since she has had several episodes of depression, she is familiar with the symptoms that should alert her to the need for intervention. Her past behavior indicates that she seeks help when she believes it is warranted. During the September 2005 and January/February 2006 episodes she did not wait until her symptoms were acute before seeking intervention. She sought help quickly and when she did, she was able to receive immediate attention. For example, in the September 2005 episode, she received prompt advice from her psychiatrist by telephone and was able to immediately increase her dose of medication. Tr. at 92-93. ⁶

⁵I believe that the individual is generally stable while on medication, and the risk that the individual might cease taking her medication is low.

⁶The individual's psychologist testified that if the individual stays on her medications as prescribed, it is unlikely that she will experience a manic episode. Tr at 119. In any event, based on the individual's responsible behavior during her depressed episodes, I believe that, using her mood graph, she will be able to identify a hypo-manic or manic episode and take

Moreover, I believe that through her daily graphs, this individual is keenly aware of her mood swings, and will take action if her mood dips or rises to unacceptable levels as previously agreed-upon with her psychologist. I therefore believe that there is a very low risk that a depression or hypomanic episode will result in a compromise of this individual's judgment or reliability and cause a security risk. See *Personnel Security Hearing* (Case No. TSO-0320), 29 DOE ¶ 82,920 (2006)(discussion of acceptable level of security risk). I believe that she will seek help long before she reaches that level. She has demonstrated an understanding of her illness and the ability to manage it promptly and correctly.

V. CONCLUSION

As the foregoing indicates, the individual has provided a persuasive showing that her mental health is currently stable, and that she recognizes the importance of following the medication regime prescribed by her psychiatrist and psychologist. I am persuaded that she recognizes the importance of seeking immediate professional help, should bi-polar symptoms appear. I believe that the individual is very knowledgeable about her condition, and will act quickly and appropriately to maintain her stability. I am convinced she has a strong support system. Based on the considerations set forth above, I find that the individual has mitigated the security concerns under 10 C.F.R. § 710.8(h). It is therefore my decision that her suspended access authorization should be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Virginia A. Lipton
Hearing Officer
Office of Hearings and Appeals

Date: October 30, 2006